

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM)	PROPOSED ADOPTION AND
42.15.109, 42.15.110, 42.15.301, and)	AMENDMENT
42.15.802 pertaining to the Montana)	
family education savings program,)	
income tax general provisions, and)	
tax returns)	

TO: All Concerned Persons

1. On November 5, 2014, at 9 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 20, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I DEDUCTIONS FOR CONTRIBUTIONS TO OTHER STATES' 529 PLANS (1) Subject to the Montana Family Education Savings Act and the rules in this subchapter, contributions made after December 31, 2012, to another state's 529 savings plan, also qualify for the deduction.

(2) Contributions to a state's prepaid tuition plan do not qualify for the deduction.

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, 15-62-207, MCA

REASONABLE NECESSITY: The department proposes adopting New Rule I to implement Senate Bill (SB) 117, L. 2013, which expanded the eligibility for deductions for contributions to the Montana family education savings program to include contributions made to 529 plans administered by other states. The legislation provided for this provision to be enacted retroactively to contributions made after December 31, 2012.

As proposed, (1) provides the beginning date for which contributions made to other state's 529 savings plans qualify for the deduction, and (2) specifies that

contributions to a state's prepaid tuition plan do not qualify for the deduction. Unlike some other states, Montana does not offer a prepaid tuition plan for its colleges and universities. Contributions to a state's prepaid tuition plan did not previously qualify for the deduction and that was not changed with the enactment of SB 117. The department proposes including the language in the rule as guidance and to avoid confusion.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.15.109 RESIDENCY (1) As provided in 15-30-2101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Section 1-1-215, MCA, sets forth rules for determining residency, and "domiciled" is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances for the tax year in question. Residency in one state is not abandoned until it can be demonstrated by the union of act and intent that it has been established in another state. An individual's intent is determined by analyzing objective factors regarding the individual's conduct and declarations. In determining residency, more weight is given to an individual's actions than is given to the individual's subjective declaration of intent.

(2) Some, but not all, of the factors that may be considered when determining residency for Montana income tax purposes are provided below. No one factor will automatically determine residency and the order of appearance in the list below does not indicate a level of importance. Residency does not depend upon any one fact or combination of circumstances, but upon the whole, taken together, and the weight to be given to the various facts and circumstances indicative or presumptive of residency depends upon the unique evidence in each case. Factors that may be considered to determine a residency include, but are not limited to:

- (a) an individual's residency status for tax purposes in prior years;
- (b) where an individual votes or is registered to vote (although casting an illegal vote does not establish residency for income tax purposes);
- (c) where an individual holds a valid driver's license;
- (d) an individual's residency status evidenced by hunting or fishing licenses;
- (e) whether a homestead declaration has been filed on a residential dwelling owned by the taxpayer;
- (f) residency status of the individual's spouse and minor children;
- (g) whether an individual claimed residency when applying for admission or financial aid at an educational institution;
- (h) where important and valuable possessions and documents are kept;
- (i) primary address used for important mail;
- (j) jurisdiction from which any professional licenses were issued;
- (k) location of the place of worship where an individual is a member;
- (l) location of any social, fraternal, athletic organizations, clubs, or lodges in which the individual is a member;

(m) location of the individual bank accounts or any other transactions the individual conducts with financial institutions;

(n) location where the individual obtains professional services including, but not limited to, lawyers, accountants, dentists, primary care physicians, or other doctors;

(o) oral or written declarations of residency evidenced by documents including, but not limited to:

(i) tax returns;

(ii) wills;

(iii) automotive insurance;

(iv) deeds;

(v) other insurance policies;

(vi) mortgages;

(vii) leases; and

(viii) contracts;

(p) location where an individual primarily exercises the individual's civil and political rights;

(q) location of an individual's business(es), profession(s), or occupation(s); and

(r) any additional fact or circumstances applicable to the specific situation.

(3) In order to make a determination regarding an individual's residency, the department may request information by asking the individual to respond to a residency questionnaire or similar written inquiry. Where appropriate, an individual is expected to be prepared to support the responses with contemporaneously kept records. An item with an unsupported, vague, or non-response will not be considered as supporting the individual's position regarding the individual's state of residence. Failure to respond to the department's inquiries may constitute evidence of residency in Montana.

(2) and (3) remain the same, but are renumbered (4) and (5).

(6) An individual who leaves Montana and spends any amount of time in another country does not lose the individual's status as a Montana resident until the individual can demonstrate through actions the intention of establishing citizenship (or similar status) in that country.

(7) The burden of proving that residency has been established outside of Montana generally falls on the individual. The burden of proving that residency has been established in Montana generally falls on the department.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.15.109 to incorporate additional information about the various aspects of residency and domicile status as they apply to individual income taxes. The proposed amendments will include a list of some of the factors that may be considered when determining an individual's state of domicile or residency status for income tax purposes. The proposed list of factors in new (2) is intended to be informative and not comprehensive. Additional factors may be considered if the situation warrants. The proposed list is not intended as a checklist or scorecard.

The amendments further outline some of the principles that are applied when making residency determinations. The principles are derived from prior rulings in cases involving residency and domicile.

42.15.110 TAXATION OF PART-YEAR RESIDENTS AND NONRESIDENTS

(1) and (2) remain the same.

(3) Part-year residents and nonresidents ~~must complete Schedule IV and compute their tax liability by multiplying the ratio of their Montana source income to income from all sources by the tax determined as if they were a resident by the ratio of their Montana source income to income from all sources for the entire tax year. They must complete Schedule IV, Nonresident/Part-Year Resident Tax, to determine this ratio.~~

(4) remains the same.

AUTH: 15-30-2104, MCA

IMP: 15-30-2101, 15-30-2103, 15-30-2104, 15-30-2110, 15-30-2111, 15-30-2114, 15-30-2131, 15-30-2132, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2154, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.15.110 as a matter of housekeeping to restructure (3) for better clarity. The process for computing the tax liability remains the same.

42.15.301 WHO MUST FILE RETURNS (1) The following must file an

individual income tax ~~or fiduciary~~ return:

(a) ~~Every every~~ resident who is a single person, and every resident who is a married person who does not elect or, as provided in ARM 42.15.321, is not allowed to elect, to file a joint return with a spouse, must file a return if the person's gross income from all sources for the taxable year is more than ~~\$1,500~~ \$4,370, adjusted as provided in (3), ~~plus the value of the exemptions the person is entitled to for age 65 or for blindness.~~ (2);

(b) ~~Married married~~ persons, both of whom are residents, not filing separate returns must file a joint return if their combined gross income for the taxable year from all sources exceeds ~~\$3,000~~ \$8,740, adjusted as provided in (3), ~~plus the value of the exemptions they are entitled to for age 65 or blindness.~~ (2);

(c) ~~Every every~~ nonresident who is a single person, and every nonresident who is a married person who does not elect or, as provided in ARM 42.15.321, is not allowed to elect, to file a joint return with a spouse, must file a return if the person's person has any Montana source income or loss and their gross income from all sources is more than \$1,500 \$4,370, adjusted as provided in (3), ~~plus the value of the exemptions the person is entitled to for age 65 or blindness, and they have any Montana source income.~~ (2); and

(d) ~~Married married~~ persons, both of whom are full-year nonresidents, not filing separate returns, must file a joint return if either or both of them have any Montana source income or loss and their combined gross income for the taxable year from all sources exceeds ~~\$3,000~~ \$8,740, adjusted as provided in (3), ~~plus the value of the exemptions they are entitled to for age 65 or blindness, and either or~~

both of them have any Montana source income (2).

(2) The minimum gross income amounts requiring filing a return shown in (1) were calculated for tax year 2014. Minimum gross income amounts:

(a) are adjusted annually in accordance with 15-30-2602, MCA. By November 1 of each year, the department will multiply the minimum amount of gross income necessitating filing by the inflation figure for the current taxable year;

(b) are increased by the value of any exemptions the person is entitled to for age 65 or for blindness, but are not also increased by the exemption allowed for all taxpayers under 15-30-2114(2)(a), MCA; and

(c) can be obtained for previous tax years by accessing the past-year downloadable tax forms from the homepage of the department's web site at revenue.mt.gov.

(3) The following must file a fiduciary return:

(e)(a) The the estate of a decedent who was a resident must file a return if its gross income for the year from all sources exceeds its exemption allowance-;

(f)(b) The the estate of a decedent who was a nonresident must file a return if its gross income from all sources exceeds its exemption allowance, and the estate has any Montana source income-; and

(g)(c) A a nonbusiness trust which is not a grantor trust and is subject to the Montana Trust Code, Title 72, chapter 33, MCA, must file a return if its gross income for the year from all sources exceeds its exemption allowance.

(h)(4) A business trust, including a REIT, is treated as a C corporation taxable under Title 15, chapter 31, MCA. See chapters 23 and 24 of Title 42, Administrative Rules of Montana, for the corporation license tax rules.

(2) remains the same, but is renumbered (5).

(3) By November 1 of each year the department will multiply the minimum amount of gross income necessitating the filing of a return by the inflation figure for the taxable year.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.15.301 as a matter of housekeeping to update the amounts shown for the filing thresholds in (1) to a more current tax year. The base year for the filing threshold currently reflected in the rule has not been revised since 1996. The department further proposes adding language to include the tax year of the threshold being represented in the rule for better clarity going forward. The department proposes including additional detail about how the minimum amount of gross income is calculated and also proposes making format revisions and separating out the information regarding fiduciary returns to improve the overall readability of the rule.

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS

PROGRAM ACCOUNTS (1) The program administrator determines who can be an account owner and from whom it will accept contributions to an account. More information regarding the administration of the program can be found at montana.collegesavings.com/montana www.mfesp.com. Account ownership and

the acceptance of contributions is are not necessarily related to the ability to reduce Montana taxable income. A person is not necessarily entitled to reduce their Montana adjusted gross income because they made a contribution or are an account owner. Entitlement to the tax benefit depends on meeting specific statutory requirements set forth in Title 15, chapter 62, MCA, and these rules.

(2) and (3) remain the same.

(4) A rollover from ~~another state's 529 plan or other private family education savings account into a Montana family education savings account is considered a contribution for which a deduction may be claimed, provided all other provisions of the Family Education Savings Act are met. The rollover may, however, be treated by the other state or the other state's plan as an unqualified withdrawal~~ one account to another or from one 529 plan to another is not a contribution for which a deduction may be claimed.

(5) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, 15-62-201, 15-62-207, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.15.802 to update a web site address and as part of implementing SB 117, L. 2013, which expanded the eligibility for deductions for contributions to the Montana family education savings program to include contributions made to 529 plans administered by other states. The legislation provided for this provision to be enacted retroactively to contributions made after December 31, 2012.

The proposed amendment in (4) provides that rollovers from one account or plan to another account or plan do not qualify as a contribution that is eligible for a deduction. The department previously accepted rollovers from other states into the Montana program because of the relative certainty that the funds would not have already been part of a previous deduction. By opening up the deduction of contributions made to any state's plan, the potential now exists that funds being moved from one state's plan into another state's plan may have already been deducted by the taxpayer on an earlier return. Tracking and verifying whether or not a deduction was previously taken for funds being transferred from one state's plan to another state's plan would create a complex and undue administrative burden on the department.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than November 12, 2014.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons

who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 117, Senator Jon Sonju, was contacted by regular mail on June 21, 2013, and subsequently notified on September 12, 2014.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State September 29, 2014.